

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

AMERICAN NATIONAL INSURANCE COMPANY

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -3666

Decision No. CU 3339

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, was presented by AMERICAN NATIONAL INSURANCE COMPANY in the amount of \$319,302.27 based upon the nationalization of its assets by the Government of Cuba.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term 'property' means any property, right, or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated, intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

Section 502(1)(B) of the Act defines the term "national of the United States" as a corporation or other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity.

An officer of the claimant corporation has certified that the claimant was organized in the State of Texas in 1905 and that at all pertinent times more than 98% of claimant's outstanding capital stock was owned by persons who are nationals of the United States. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

The Commission finds, on the basis of the evidence of record, that claimant owned two bank accounts in Cuban banks and 71 bonds of the issue known as 4-1/2% Bonds of the External Debt of the Republic of Cuba, 1933-1977.

On October 24, 1960, the Government of Cuba published in its Official Gazette Resolution 3, pursuant to Law 851, which listed as nationalized the AMERICAN NATIONAL INSURANCE COMPANY. The Commission finds that claimant's two bank accounts and its 71 4-1/2% bonds were nationalized by the Government of Cuba on October 24, 1960 within the meaning of Title V of the Act.

Bank Accounts

The record shows that claimant's account with the First National City Bank of New York, Havana Branch, had a balance of 247,072.05 pesos as of October 21, 1960. However, claimant has stated that it had outstanding checks aggregating 20,682.59 pesos. Accordingly, the Commission finds that claimant's balance was 226,389.46 pesos, and had a value of \$226,389.46.

The Commission further finds on the basis of a bank statement that claimant's account with Banco Godoy-Sayan, Havana, Cuba, had a balance of 31,220.72 pesos as of November 30, 1960, and had a value of \$31,220.72.

It is therefore concluded that claimant sustained a loss of \$257,610.18 with respect to its two bank accounts.

4-1/2% Government Bonds

The Commission finds that claimant's 71 bonds of the issue known as 4-1/2% Bonds of the External Debt of the Republic of Cuba, 1933-1977, had a face value of \$70,500.00. These bonds included provision for the payment of interest in the amount of \$22.50 semiannually on June 30 and December 31 for each \$1,000 face value of the bonds.

An authorized officer of claimant has stated under oath that interest and principal on these bonds was last paid on June 30, 1960. The Commission therefore finds that the amount of unpaid indebtedness on these bonds on October 24, 1960, the date of loss, was \$70,500.00.

5% Government Bonds

A portion of this claim is based upon bonds in the face amount of \$6,000.00 of the issue known as Republic of Cuba External Debt 5% Gold Bonds of 1914, dated February 2, 1914, due February 1, 1949.

Claimant states that these bonds were deposited with the Government of Cuba and to the best of its knowledge are still in Cuba's possession. It is further stated that attempts were made to redeem the bonds on and after the maturity date but that the Cuban Government refused payment. An authorized officer of claimant stated that "We are unable to determine any value for these bonds."

Evidence available to the Commission indicates that public notice of redemption of these 5% bonds on February 1, 1949 was published by the fiscal agents under date of December 29, 1948 and that these bonds were retired in 1949. (See Foreign Bondholders Protective Council, Inc., Report for 1946-1949, pp. 160, 162.) The Commission is informed that under Cuban law an action to enforce payment of a money obligation is barred after five years from the due date of the obligation. There is neither an allegation nor any evidence to establish that the obligations represented by these bonds were extended or revived on or after January 1, 1959. Accordingly, the Commission finds that claimant had no enforceable claim on or after January 1, 1959 on account of the bonds which are the subject of this portion of the claim.

Section 503(a) of the Act provides only for certain claims of nationals of the United States against the Government of Cuba arising since January 1, 1959. On the basis of the evidence of record, the Commission finds that this portion of the claim arose prior to January 1, 1959. Accordingly, the portion of the claim based upon said 5% bonds is denied.

The Commission finds that the total loss sustained by claimant as a result of action by the Government of Cuba within the meaning of Title V of the Act was \$328,110.18.

It will be noted that the total amount of the losses found herein is in excess of the amount asserted by claimant. However, in determining the amount of loss sustained, the Commission is not bound by any lesser or greater amounts which may be asserted by claimant as the extent thereof.

The Commission has decided that in certification of losses on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement. (See Claim of Lisle Corporation, Claim No. CU-0644), and it is so ordered.

CERTIFICATION OF LOSS

The Commission certifies that AMERICAN NATIONAL INSURANCE COMPANY suffered a loss, as a result of actions of the Government of Cuba within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Three Hundred Twenty-eight Thousand One Hundred Ten Dollars and Eighteen Cents (\$328,110.18) with interest at 6% per annum from October 24, 1960 to the date of settlement.

Dated at Washington, D. C.,
and entered as the Proposed
Decision of the Commission

NOV 27 1968

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Freidberg

Sidney Freidberg, Commissioner

NOTICE TO TREASURY: The above-referenced securities may not have been submitted to the Commission or if submitted, may have been returned; accordingly, no payment should be made until claimant establishes retention of the securities for the loss here certified.

The statute does not provide for the payment of claims against the Government of Cuba. Provision is only made for the determination by the Commission of the validity and amounts of such claims. Section 501 of the statute specifically precludes any authorization for appropriations for payment of these claims. The Commission is required to certify its findings to the Secretary of State for possible use in future negotiations with the Government of Cuba.

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g), as amended, 32 Fed. Reg. 412-13 (1967).)